

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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GREGG A. SPINDLER AND SUSAN L. SPINDLER, D/B/A  
SGS STATISTICAL SERVICES,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A  
DOMINION VIRGINIA POWER; AND NORTH  
AMERICAN TRANSMISSION FORUM, INC.,

Defendant.

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**COMPLAINT AND  
DEMAND FOR JURY**

Civil Action No.  
5:15-cv-779 (TJM/DEP)

Gregg A. Spindler and Susan L. Spindler, d/b/a SGS Statistical Services, by their undersigned attorneys, for their complaint against Defendants, allege as follows:

**NATURE OF THE ACTION**

1. This is an action to cease Defendants' breach of contract, trade secret misappropriation, unfair competition and conversion and for the recovery of damages caused by Defendants' unlawful conduct.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiffs, Gregg A. Spindler and Susan L. Spindler (collectively "the Spindlers") are individuals doing business as SGS Statistical Services and have their residence and principal place of business at 3975 Pompey Hollow Road, Cazenovia, New York ("SGS").

3. Defendant Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion"), at all relevant times, was and is a corporation organized and existing under the laws of the State of Virginia with its principal place of business located in Richmond, Virginia.

Dominion engages in the generation, transmission, distribution, and sale of electricity in Virginia.

4. On or about November 5, 2012, Dominion executed an agreement with SGS for SGS to provide services to Dominion (“SGS Agreement”). The parties agreed that the SGS Agreement was “made executed and delivered in Onondaga County, New York and shall be governed by the Laws of the State of New York for any action concerning or arising out of” the SGS Agreement. See Exhibit A, ¶ 9.6.

5. Defendant North American Transmission Forum, Inc. (“NATF”) is a New Jersey business corporation with its principal place of business in Charlotte, North Carolina.

6. NATF is an incorporated trade organization and its members include investor-owned, state-authorized, municipal cooperative, federal and Canadian provincial utilities.

7. NATF is governed by its members.

8. Upon information and belief, NATF has multiple members who reside in and have their principal place of business in New York State.

9. Upon information and belief, the New York Independent System Operator (“NYISO”) and the New York Power Authority are members of NATF. Other NATF members are New York transmission owners or operators.

10. Upon information and belief, NATF’s activities in New York are continuous and systematic and NATF derives substantial revenue from its activities in New York.

11. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it is between citizens of different states and, as set forth more fully below, the amount in controversy exceeds \$75,000.00 exclusive of costs and interest.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to SGS's claims occurred or are occurring in this judicial district.

**FACTS COMMON TO ALL COUNTS**

13. The Spindlers began performing work as SGS in 1989.

14. The Spindlers are professional statisticians. Both have Master of Science degrees in Applied Statistics from Rochester Institute of Technology (1987) and Bachelor of Science degrees from University of Louisiana – Lafayette (1985) and have been self-employed since 1991.

15. In 1995 SGS began performing the annual SGS Transmission Reliability Benchmarking Study (“SGS Study”) for many electric transmission systems throughout the United States.

16. The SGS Study was developed to assess the historical reliability of electric power transmission systems throughout the United States. Electric power transmission is the bulk transfer of electricity from generating power plants to electrical substations and generally operates at voltages above 34 kilovolts (kV). Voltages between 34 kV and below 100 kV are referred to as “subtransmission” and voltages at or above 100 kV are referred to as “bulk power”. Electric power distribution is the delivery of the electricity from substations to consumers and generally operates at voltages below 34 kV. The SGS Study is focused entirely on the reliability of electric power transmission systems.

17. Primarily, the SGS Study provides comparative benchmarking to transmission systems regarding electric transmission outages. An “outage” is the automatic or non-deferrable emergency manual opening of a circuit breaker or switch in response to a fault or safety condition, much like a circuit breaker trip in a household. Every outage has a root cause. The

information provided by the SGS Study enables transmission systems to determine how their systems perform relative to the industry so that they can determine whether the reliability of their system is being effectively managed.

18. The SGS Study provides detailed transmission system, voltage class and individual circuit level performance measures (the “Benchmarks”).

19. The Benchmarks are produced for multiple transmission system service quality attributes including: transmission circuit outage frequency and outage duration; transmission circuit outages impacting retail and wholesale customers; transmission circuit outages impacting delivery points (where the transmission system transfers electricity to the distribution system); and quantification of the root causes of transmission circuit outages.

20. The Benchmarks are produced for individual transmission owners and are aggregated into various multi-system averages and percentiles which are sometimes called external benchmarks.

21. This information is produced for quarterly, annual and multi-year averages. This information is presented in the SGS Study in a variety of formats including bar charts, long-term trend charts, tables and output data files for subsequent internal analysis by SGS customers.

22. The benchmarking results may be used by transmission system management and regulatory bodies to assess a transmission system’s relative industry position versus other transmission systems or external benchmarks and its long-term reliability trends. Individual circuit level performance measures are used by reliability managers and planners to identify under-performing transmission assets for corrective actions and may be used to answer wholesale customer complaints.

23. The SGS Study has set the standard for benchmarking transmission reliability since 1995. The SGS Study is the largest independent benchmarking comparison forum for electric transmission reliability in the world.

24. The SGS Study utilizes 5+ years of raw transmission circuit outage data and applies common rules to all systems to insure the highest integrity of analysis and comparisons.

25. Prior to the inception of the SGS Study, there was no comparable transmission benchmarking forum encompassing all regions in the United States and all transmission voltages.

26. Other independent benchmarking forums used summary data, not raw data.

27. Some regional reliability councils (voluntary organizations of transmission owners dedicated to monitor transmission reliability in defined geographic regions, e.g., Mid-America Interconnected Network, Electric Reliability Council of Texas) produced annual reliability reports based on raw data collected by the entity itself and benchmarks were based on industry standards. Such reports were limited in geographic coverage and only applied to higher transmission voltages, generally at or above 230 kV. Most of the regional reliability council reliability reports were abandoned in the 1990s because of the labor-intensive nature of standardizing the outage data. Voluntary regional reliability councils ceased to exist in 2005.

28. The Canadian Electricity Association has produced a benchmarking report for its members for the past several decades, but it is limited to Canada. It publishes an annual summary report and uses raw outage data.

29. These reliability benchmarking reports have used performance measures as defined by or derived from the Institute of Electrical and Electronics Engineers (IEEE), such as IEEE Standard 859-1987 - "IEEE Standard Terms for Reporting and Analyzing Outage Occurrences and Outage States of Electrical Transmission Facilities" (IEEE 859) and IEEE

Standard 1366-2012 - “IEEE Guide for Electric Power Distribution Reliability Indices” (IEEE 1366).

30. In 2006, the North American Electric Reliability Corporation (“NERC”) was certified by the Federal Energy Regulatory Commission (“FERC”) as the “electric reliability organization” to regulate electric transmission reliability in the United States. NERC now regulates electric transmission reliability in the United States and most of Canada.

31. In 2008, NERC established the Transmission Availability Data System (“TADS”). TADS requires transmission owners to submit complete outage data in a NERC-defined format for circuits above 200 kV and very limited outage data for voltages between 100 kV and under 200 kV. The TADS data submission process is very labor-intensive and requires weeks of labor for most systems. NERC issues an annual TADS report, which is based largely on industry-standard performance measures, but it does not serve as a between-transmission system benchmarking study.

32. In contrast, the SGS Study relies on raw transmission outage data and circuit definitions (an inventory of transmission circuits and their physical characteristics which were active during the time period represented in the outage data) as the building block for the SGS benchmarking comparisons. The SGS Study includes all transmission voltages above 34 kV.

33. Because the SGS Study relies on a flexible model of raw outage data and circuit definitions, it does not require participants to summarize data and the data submission process is not labor-intensive, requiring only a few days of labor. SGS developed a computer program with a participant-specific conversion code to standardize data formats for analysis which eased the burden for transmission owners to participate in the SGS Study. In 2013, the Study contained outage history for approximately 14,421 transmission circuits and 227,431 outages from 20

different transmission systems, representing over 51.5% of the North American transmission grid, based on the NERC TADS circuit inventory.

34. Over a two decade period, SGS developed a series of “data filters” to identify erroneous or anomalous outage and circuit data to insure data integrity and quality. The data filters have been the primary key to the ability of SGS to provide valid between-system benchmarks.

35. The transmission circuit outage data filters consist of approximately 20 computer programs, each performing a category of integrity checks. The data filters fall generally into the following categories: (a) validation of circuit definitions; (b) identification of inconsistencies and recording errors in outage data; (c) comparison of successive years’ data submissions to insure year-to-year consistency; (d) evaluation of customer or delivery point interruptions using rules similar to transmission circuit outage data filters; and (e) a summary of assets to be included in the SGS Study; (f) Six Sigma Screening for “Major Event Days”; (g) tabulation of outage causes; and (h) preliminary IEEE and NERC TADS performance statistics.

36. Data filters are fully customized for each participant and consist typically of 22 Excel files and 2 PDF documents. The data filters flag anomalous or erroneous data and each filter is then assessed for “reasonableness” based on statistical rules and subjective, experiential rules. For prior participants, outage and circuit data submissions are compared to their prior years’ submissions.

37. The bulk of the SGS Study is produced using computer programs written by SGS in SAS® software, a data management, reporting and analysis software system licensed by SGS from SAS Institute Inc.

38. There are dozens of custom-written SAS programs or modules used in production of the SGS Study. These program modules are typically several hundred lines in length and require significant development, programming and validation time which is measured in weeks and months of labor for each module. The process of developing the algorithms, rules and writing the programs used to produce the SGS Study evolved over a period of two decades and required the full-time work of two professional statisticians.

39. The most important attribute of the SGS Study is that all participant data submissions are handled in an identical, standardized manner, which helps assure valid consistency of between-system comparisons. The handling of the data is performed through SGS's proprietary data filters.

40. The SGS Study has a proprietary statistical method, known as "Six Sigma Screening", for identifying and removing "major event days" (i.e., including, but not limited to extreme weather events causing many outages and/or extended outage duration) from outage data. This method was developed over an eight year period between 1996 and 2004 and did not exist prior to the inception of the SGS Study.

41. Six Sigma Screening is performed individually for each transmission system. Six Sigma Screening is occasionally supplemented with "prescreening" of the most catastrophic events (e.g., weather such as Hurricane Katrina or one-off extended equipment failures lasting months) by declaring them as "excludable outage events".

42. The Six Sigma Screening differs substantially from the IEEE 1366 "Beta Method" for identifying "major event days". The IEEE 1366 "Beta Method" is well known and applied in the electric distribution industry but is unsuitable for identifying "major event days" with respect to transmission.



43. The SGS Study weights external performance benchmarks based on an inventory of transmission circuits and “circuit years” or “circuit mile-years”. This method was not routinely applied to the electric transmission industry prior to the inception of the SGS Study and was not adopted by NATF until the third quarter of 2013.

44. The SGS Study utilizes methods of ranking transmission system, voltage class and individual circuit level performance using “composite scores”, based on weightings and percentiles, which combine different outage data into a single numerical summary. SGS refers to this as the Transmission Availability Composite Score (“TACS”). This method was developed by SGS and did not exist in the electric transmission industry prior to the inception of the SGS Study.

45. The SGS Study has been unique in its ease-of-use presentation format, providing at-a-glance performance comparisons which were previously unavailable to transmission owners.

46. The proprietary technology, formulae and processes are the result of substantial time, investment and effort on behalf of SGS.

47. The Spindlers developed the SGS methods and computer programs over a 21 year period working full-time in the development of those methods and programs.

48. Algorithms and computer programs to perform Six Sigma Screening involved multiple weeks of work in multiple calendar years to derive and perfect.

49. SGS’s rights in and to the proprietary technology, formulae and processes provide it with a unique, valuable and distinctive advantage because the proprietary technology, formulae and processes are not publicly available and are not generally known outside of the SGS Study group.

50. SGS has taken reasonable steps to insure that the proprietary technology, formulae and processes remain confidential.

51. SGS enters into contracts with its clients which contain a confidentiality provision which restricts the use of the SGS Study to the client's internal use and prohibits the client from disclosing the SGS Study to third parties, including professional or trade associations and competitors of SGS. This confidentiality provision is also contained in the "Terms of Use" section of the SGS Study.

52. In 2001, Dominion began participating in the SGS study.

53. On November 5, 2012, Stephen B. Edwards, the Manager of Electric Transmission Reliability for Dominion signed a contract on behalf of Dominion with SGS (the "SGS Contract"). A copy of the contract is attached hereto as **Exhibit A**.

54. In the SGS Contract, SGS agreed to provide Dominion with certain deliverables which included (a) a customized Report PDF document containing hundreds of pages; (b) a "Summary" report of 30+ pages and a larger "Extended Summary" of 150+ pages; (c) NERC TADS Supplement; and (d) a Study CD containing output data files and Adobe PDF copies of the Report, Summaries and NERC TADS Supplement (the "Dominion Report").

55. SGS also agreed to provide Dominion with a report showing the results of the filtering of Dominion's data ("Data Filter Report"). The Data Filter Report consists of approximately 22 Excel files and 2 PDF documents detailing the data filtering process.

56. Dominion also had access to multiple reports on the SGS website through a secure, password protected, "Members Only" page.

57. The Dominion Report included a "Terms of Use" section which is attached hereto as **Exhibit B**.

58. The Data Filter Report also contains a terms of use section which prohibits the use of the report for any purpose other than the SGS Study.

59. The Members Only page of the SGS website also provides that the material on that page may be used by SGS participants for their internal business purposes only and may not be circulated to third parties without written permission of SGS.

60. Within the Dominion Report, the Data Filter Report and the various reports contained within the Members Only page of the SGS website are the methods and formulas used by SGS to filter the raw data provided to it by Dominion and other transmission systems and the methodology that SGS uses to insure valid benchmarking comparisons for outage based data and measures.

61. The Dominion Report is a PDF document containing hundreds of pages, delimited by "Tabs". Tabs 1 through 4 are approximately 150 pages in length and contain proprietary trade secret information of SGS which fully describe the definitions, algorithms and formulas used to generate the performance statistics and benchmarks. Tabs 5 through 13 are many hundreds of pages and contain charts and tables of benchmarking statistics for comparisons. There are also two Summary reports (one brief and one extended) containing similar information, but lacking the proprietary trade secret information of SGS.

62. The only portion of the Dominion Report that Dominion was permitted to share with third-parties was the 30+ page "Summary" report. It does not detail the proprietary trade secret information of SGS which fully describe the definitions, algorithms and formulas used to generate the performance statistics and benchmarks.

63. SGS also presented the results of its report to Dominion and other transmission systems at its two day client-only annual conferences between 2001 and 2013 where it discussed

in detail the methods and formulas used by SGS in the SGS Study. Each year at its conference, SGS would present and discuss its “Terms of Use” contained in the SGS Study.

64. In the SGS Contract, Dominion agreed that: “SGS Statistical Services is the author of the Study and the Copyright holder. Much of the information contained therein is the confidential trade secret and proprietary information of SGS which was developed at great expense to SGS.” Exhibit A, ¶ 3.8.

65. The SGS Contract only provided Dominion with a non-exclusive license to use the SGS Study for its own internal use. Exhibit A, ¶ 3.8.

66. The SGS Contract prohibited Dominion from providing “the Study or any portion thereof except as provided in subsections 3.9 and 3.10 to third parties including, but not limited to, regulatory agencies, other transmission owners or operators which are not participants in the Study, consultants, contractors, professional or trade associations and competitors of SGS without SGS’s prior written approval.” The SGS Contract also provided that the information contained in the SGS Study could not be sold, traded or given to third parties without SGS’s prior written approval. Exhibit A, ¶ 3.8. This provision survived the termination of the SGS Contract.

67. The “Terms of Use” which were part of the Dominion Report contained identical provisions to those described in paragraphs 64 through 66 herein.

68. NATF was formed in or about July of 2009. At that time, NATF was affiliated with NERC.

69. In 2010, NATF became independent from NERC to provide best practices benchmarking for the electric transmission industry. As part of this effort, NATF began collecting its own data in NERC TADS format for all transmission voltages above 34 kV and

established a “Reliability Metrics Team” facilitated by an NATF manager, Christian D. Johnson (“Johnson”), and populated with senior engineers from NATF member organizations, including James B. “Brian” Starling (“Starling”), an engineer and employee of Dominion.

70. The employees from NATF member organizations who are members of the Reliability Metrics Team each have full time jobs and each volunteer their time to the work of the Reliability Metrics Team.

71. NATF is funded by member dues which are paid annually by each member. The activities and services that NATF provides to its members are provided at no additional cost to the members above their annual dues.

72. In March 2013, at the encouragement of some of its customers including Dominion, SGS contacted NATF to discuss collaboration in reliability benchmarking with SGS acting as a contractor for NATF. At that time, NATF had been receiving member outage data for approximately two or three years and had been unable to produce any reliability benchmarking reports for its members.

73. On April 4, 2013, Gregg Spindler had a conference call with Thomas Galloway (“Galloway”), CEO of NATF, Catherine Sills, NATF director of Knowledge Systems, and Johnson to discuss collaboration between SGS and NATF. NATF did not express any collaborative interest during the conference call. NATF did not respond to two subsequent follow-up inquiries from SGS during April 2013.

74. In September 2013, SGS became aware that NATF, using the services of Starling, had developed a prototype reliability benchmarking report that was substantially similar to the SGS Study. SGS was advised by several of its customers that there were substantial similarities between the SGS Study and the NATF prototype reliability benchmarking report.

75. Upon information and belief, NATF's effort to develop a reliability benchmarking report began in 2012.

76. After being notified of the NATF prototype reliability benchmarking report, Gregg Spindler sent Dominion a letter dated September 7, 2013 which was followed by a one hour meeting between Gregg Spindler and Scot Hathaway ("Hathaway"), the Vice President of Transmission for Dominion, on September 11, 2013. Gregg Spindler explained in detail the various aspects of the SGS Study that are proprietary and that he believed were used without authorization by Dominion in connection with its involvement with the NATF Reliability Metrics Team and its involvement in the NATF prototype benchmarking report. Gregg Spindler asked Hathaway to withdraw any SGS property given to NATF without permission. Gregg Spindler also asked Hathaway to show him the NATF report under terms of a non-disclosure agreement and Hathaway refused.

77. Hathaway denied that Dominion provided any services to NATF. Hathaway asserted that the NATF report was a collective effort of the NATF Reliability Metrics Team.

78. On September 12, 2013, Gregg Spindler notified the other participants in the SGS Study of his concerns that the NATF prototype benchmarking report used SGS intellectual property and requested that they bring the matter to the attention of the NATF.

79. The NATF Board authorized Galloway to investigate the allegations. Galloway responded to Gregg Spindler on or about October 16, 2013 denying the assertion that the NATF report is substantially similar to the SGS Study and denying that NATF used SGS's proprietary methods in developing its report. Galloway stated that "[i]f there is something specific about the NATF reports that SGS believes infringes its rights, please let us know what it is and provide us with examples and proofs to support your assertions - including a comparison of the SGS Study

and the NATF reports – so that we can adequately understand and then further assess and address any remaining claims that you may have.”

80. Prior to receiving any response from SGS to that the NATF could further assess its claims, upon information and belief, on or about November 1, 2013, Galloway wrote to NATF members to advise of the results of his investigation. Galloway denied that the SGS Study was copied by NATF. He stated, “any purported similarities in the NATF and SGS reports are simply reflective of the fact that both organizations generate reports for the power transmission industry based on industry data, and both offer data analysis and graphical portrayals of collected information.”

81. In response to Galloway’s October 16, 2013 request that SGS provide him with a comparison of the SGS Study and the NATF report, and because SGS had not seen and was not privy to the NATF report, on or about November 4, 2012, Gregg Spindler asked Galloway to provide him with a copy of the NATF report and a description of all computational methods and formulas used in the processing of the raw data and all statistics contained in the NATF report and any academic or industry references of the statistics contained in the NATF report. Gregg Spindler provided Galloway with a non-disclosure agreement that would protect the confidentiality, and restrict use by SGS, of the NATF report and the other information provided by Galloway for the purpose of performing the comparison requested by Galloway.

82. On November 8, 2013, counsel for the NATF sent SGS a letter denying the alleged infringement and refusing to provide any information to SGS for it to perform a comparison.

83. On October 29, 2014, SGS met with NATF’s attorneys in New York City for the purpose of discussing the use by NATF of SGS’s proprietary processes and methods. During

that meeting, NATF's attorneys presented SGS with an onerous non-disclosure agreement which would essentially have required SGS to release its claims against NATF if NATF provided SGS with the NATF report to conduct a comparison. SGS asked that the proposed non-disclosure agreement be revised to remove the onerous provisions but that request was denied by counsel for NATF. SGS could not sign the onerous non-disclosure agreement and, therefore, no information regarding the NATF report was ever shared with SGS.

84. It has taken SGS decades to develop the SGS Study and the underlying data filtering formulas and methods, the statistical screening formulas and methods and the composite scoring formulas and methods. It is implausible, if not impossible, that NATF, using volunteers from its member organizations, could develop a similar study from 2012, when NATF started to develop a report, to 2013 when the NATF's prototype report was released, without misappropriating the confidential and proprietary information of SGS.

85. Upon information and belief, NATF used and is using data filters that are identical or substantially similar to the proprietary data filters used by SGS to process the raw data received from transmission systems.

86. Upon information and belief, NATF used and is using statistical screening methods which are identical or substantially similar to the Six Sigma Screening used by SGS for identifying and removing "major event days" from outage data.

87. Upon information and belief, NATF used and is using composite scoring methods which are identical or substantially similar to the composite scoring methods used by SGS to rank the reliability of transmission systems.



88. Upon information and belief, NATF deliberately copied or patterned the visual appearance of the SGS Summary and Extended Summary because those summaries are the recognized standard for transmission reliability benchmarking.

89. Upon information and belief, the NATF reliability benchmarking report is provided to NATF members at no additional cost beyond their annual membership dues.

90. Each of SGS's customers are also members of NATF.

91. Because each of SGS's customers are also members of NATF, after NATF began work on its reports in 2012 and after NATF released its prototype report to its members in 2013, SGS began losing customers.

92. In 2012, SGS had 25 customers and generated approximately \$563,000 in revenue from those customers.

93. In 2013, SGS had 20 customers and generated approximately \$544,000 in revenue from those customers.

94. In 2014, the first year that NATF issued an actual report to its members, SGS lost 6 customers and its revenues decreased to approximately \$300,000.

95. SGS has had significant difficulty marketing the SGS Study to new or previous customers since the inception of the NATF report.

96. In 2015, SGS maintained its 14 customers and had revenues of approximately \$297,500.

## **COUNT I**

### **BREACH OF CONTRACT AGAINST DOMINION**

97. SGS incorporates each and every allegation of Paragraphs 1 through 96 of the Complaint as though fully set forth herein.

98. On November 5, 2012, Dominion entered into the SGS Contract for the provision of services by SGS to Dominion.

99. In the SGS Contract, SGS agreed to provide Dominion with the Dominion Report. SGS provided Dominion with the Dominion Report on or about May 13, 2013. SGS also agreed to provide Dominion with the Data Filter Report and provided Dominion with that report on or about January 12, 2013.

100. During the period of time that Dominion was a member of the SGS Study, it also had access to multiple reports on the SGS website through a secure, password protected, Members Only page.

101. Contained within the Dominion Report, the Data Filter Report and the various reports contained within the Members Only page of the SGS website are the methods and formulas used by SGS to filter the raw data provided to it by Dominion and other transmission systems and the methodology that SGS uses to insure valid benchmarking comparisons for outage based data and measures.

102. In the SGS Contract, Dominion agreed that: “SGS Statistical Services is the author of the Study and the Copyright holder. Much of the information contained therein is the confidential trade secret and proprietary information of SGS which was developed at great expense to SGS.” Exhibit A, ¶ 3.8.

103. The SGS Contract only provided Dominion with a non-exclusive license to use the SGS Study for its own internal use. Exhibit A, ¶ 3.8.

104. The SGS Contract prohibited Dominion from providing “the Study or any portion thereof except as provided in subsections 3.9 and 3.10 to third parties including, but not limited to, regulatory agencies, other transmission owners or operators which are not participants in the

Study, consultants, contractors, professional or trade associations and competitors of SGS without SGS's prior written approval." The SGS Contract also provided that the information contained in the SGS Study could not be sold, traded or given to third parties without SGS's prior written approval. Exhibit A, ¶ 3.8. This provision survived the termination of the SGS Contract.

105. The Dominion Report contained a "Terms of Use" section which contained identical terms as the terms identified in paragraphs 102 through 104 herein. The Data Filter Report also contained a terms of use provision.

106. The Members Only page of the SGS website also provides that the material on that page may be used by SGS participants for their internal business purposes only and may not be circulated to third parties without written permission of SGS.

107. Upon information and belief, in breach of the SGS Contract and the Terms of Use provisions, Dominion provided to NATF and/or used in the development of the NATF report, the proprietary data filters used by SGS to process the raw data that NATF received from its member transmission systems.

108. Upon information and belief, in breach of the SGS Contract and the Terms of Use provisions, Dominion provided to NATF and/or used in the development of the NATF report, the Six Sigma Screening method used by SGS for identifying and removing "major event days" from outage data.

109. Upon information and belief, in breach of the SGS Contract and Terms of Use provisions, Dominion provided to NATF and/or used in the development of the NATF report, the composite scoring methods used by SGS to rank the reliability of transmission systems.

110. Upon information and belief, in breach of the SGS Contract and the Terms of Use provisions, Dominion provided to NATF the Dominion Report and/or used the Dominion Report in the development of the NATF report, to pattern the visual appearance of the NATF report to that of the SGS Summary and Extended Summary.

111. As a result of Dominion's breach of the provisions of the SGS Contract, SGS has and continues to suffer harm in an amount that is not presently ascertainable, but exceeds \$500,000.00 and will be proven at trial.

## **COUNT II**

### **TRADE SECRET MISAPPROPRIATION AGAINST ALL DEFENDANTS**

112. SGS incorporates each and every allegation of Paragraphs 1 through 111 of the Complaint as though fully set forth herein.

113. SGS owns the rights to protectable trade secrets in the data filtering formulas and methods, the statistical screening formulas and methods and the composite scoring formulas and methods that SGS uses in the SGS Study.

114. These formulas and methods are the result of a substantial investment of time and money by SGS.

115. These formulas and methods cannot be ascertained by reasonable lawful means.

116. These formulas and methods provide SGS with a commercial benefit because they are not generally known outside of SGS.

117. SGS has taken reasonable steps to insure that its formulas and methods remain confidential.

118. Dominion had a contractual obligation to SGS not to use or disclose the formulas and methods to NATF or any other third-party.

119. NATF had actual knowledge that Dominion had an obligation to SGS not to use or disclose SGS's formulas and methods.

120. Dominion, with NATF's knowledge and at NATF's direction, has disclosed SGS's formulas and methods without SGS's consent.

121. Dominion and NATF have used the SGS formulas and methods for their own benefit, and for the benefit of other third parties, including NATF's members, without SGS's consent.

122. Dominion's and NATF's unlawful activities have diverted customers from SGS and have resulted in lost profits to SGS.

123. As a direct and proximate result of Dominion's and NATF's unlawful activities herein, SGS has and continues to suffer irreparable harm. Unless restrained and enjoined by this Court, such conduct will permit NATF to gain and/or retain an unfair competitive advantage over SGS.

124. As a direct and proximate result of Dominion's and NATF's unlawful activities, SGS has and continues to suffer harm in an amount that is not presently ascertainable, but exceeds \$500,000.00 and will be proven at trial.

### **COUNT III**

#### **UNFAIR COMPETITION AGAINST NATF**

125. SGS incorporates each and every allegation of Paragraphs 1 through 124 of the Complaint as though fully set forth herein.

126. NATF and SGS are competitors.

127. By using the SGS formulas and methods in its report and by copying the visual appearance of the SGS Summary and Extended Summary, NATF is misappropriating SGS's

rights in and to the formulas, methods and appearance of the SGS Study and is misappropriating the skills, expenditures and labor of SGS.

128. By using the SGS formulas and methods and the visual appearance of the SGS Study in its report, NATF is engaged in unfair competition in violation of the common law of the State of New York.

129. The acts of NATF in misappropriating the SGS formulas and methods and the visual appearance of the SGS Study, were committed willfully, in bad faith and with the intention of harming SGS.

130. As a direct and proximate result of this unlawful activity, SGS has and continues to suffer irreparable harm. Unless restrained and enjoined by this Court, such conduct will permit NATF to gain and/or retain an unfair competitive advantage over SGS.

131. As a direct and proximate result of NATF's unlawful activity, SGS has and continues to suffer harm in an amount that is not presently ascertainable, but exceeds \$500,000.00 and will be proven at trial.

#### **COUNT IV**

#### **CONVERSION**

132. SGS incorporates each and every allegation of Paragraphs 1 through 131 of the Complaint as though fully set forth herein.

133. SGS owns the formulas and methods contained within the SGS Study and the Dominion Report.

134. Dominion and NATF intended to and have appropriated the formulas and methods contained within the SGS Study and the Dominion Report to the exclusion of SGS' right to sole possession of that secret and proprietary information.

135. Dominion's and NATF's use of that information has destroyed the secrecy and confidentiality of that proprietary information and has diluted the value of that proprietary information, thereby excluding SGS from the right to possess the exclusive use and full value of that proprietary information.

136. The acts of Dominion and NATF were committed willfully and with the intention of harming SGS.

137. As a direct and proximate result of Dominion's and NATF's unlawful activities, SGS has and continues to suffer irreparable harm. Unless restrained and enjoined by this Court, such conduct will permit NATF to gain an unfair competitive advantage over SGS.

138. As a direct and proximate result of Dominion's and NATF's unlawful activities, SGS has and continues to suffer harm in an amount that is not presently ascertainable but exceeds \$500,000.00 and will be proven at trial.

WHEREFORE, SGS prays that this Court enter an Order:

A. Enjoining Defendants, their officers, directors, owners, shareholders, independent contractors, subsidiaries, affiliates or anyone acting in concert with Defendants, or on Defendants' behalf, from:

1. Using the SGS Study, the Dominion Report or any of the information contained therein for any purpose other than the purpose specifically authorized in the SGS Contract and the SGS Terms of Use;
2. Using SGS's confidential and proprietary formulas and methods; and
3. Using any imitation or derivation of SGS's confidential and proprietary formulas and methods.

B. Requiring that Defendant NATF account for all profits made by Defendant NATF in connection with any commercial activity relating to its use of the SGS Study, Dominion Report, and/or the SGS proprietary formulas and methods.

C. Awarding SGS damages it has sustained as a result of Defendant Dominion's breach of contract.

D. Awarding SGS damages it has sustained as a result of Defendants' wrongful acts.

E. Awarding SGS punitive damages as a result of Defendants' wrongful acts.

F. Awarding SGS attorneys' fees it has incurred as a result of Defendants' wrongful acts.

G. Awarding SGS any further relief that the Court deems just and proper.

**JURY DEMAND**

SGS demands a jury on all issues triable thereby.

Dated: June 25, 2015

BOND, SCHOENECK & KING, PLLC

By: 

Brian J. Butler

Bar Roll No.: 510105

Attorneys for Plaintiff

One Lincoln Center

Syracuse, New York 13202

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**EXHIBIT A**

s g s statistical services

1975 Pompey Hollow Road, Cazenovia, NY 13035  
315-655-5157 gregg.spindler@sgsstat.com

November 1, 2012

**Proposal, Agreement and Requirements for the  
2013 SGS Transmission Reliability Benchmarking Study**

SGS Statistical Services ("SGS") proposes to Dominion VA Power ("Company") participation in the 2013 SGS Transmission Reliability Benchmarking Study ("Study") for the comparative reliability analysis of its system. The Study will pool Company's raw transmission outage data with other participating transmission systems ("Participants") to provide circuit, voltage class and system rankings relative to a large transmission industry sample. This document (the "Agreement") should be formally executed with an authorized signature or included as an addendum to Company's purchase order or services contract, by doing so Company agrees to the terms contained herein.

1. **Deliverables:** The Study's five (5) primary deliverables are: (1) a customized Report PDF document of 300 pages+ ("Report"); (2) a "Summary" report of 30+ pages and larger "Extended Summary"; (3) NERC TADS Supplement; (4) a Study CD containing output data files and Adobe PDF copies of the Report, Summaries and NERC TADS Supplement; (5) a results presentation conference. Deliverables contain the key elements listed in sections 1.1-1.5. These elements have been included in past Studies for several years and are subject to change and/or addition dependent upon Participant consensus. SGS professional discretion and Participant supporting data:
  - 1.1 **Report:** Separate benchmarking analysis of Automatic-only and Auto+Forced/Manual outage performance. Delivered in Adobe PDF format, consisting of the following sections:
    - Discussion and Methods:** Report section 100+ pages, written in lay terminology, containing analysis, interpretation, data dictionary for electronic output, definitions and formulas.
    - Between-System Comparisons:** Comparisons using graphical and tabular reliability performance summaries by voltage class and system level. The comparisons anonymously identify each system and also provide over-all Study average, quartiles and geographic region averages. The between-system comparisons contain the following reliability measures:
      - Composite Scores: Transmission Availability Composite Scores (TACS). Annual summaries and multi-year averages.
      - IEEE Metrics: Average Circuit Outages Frequency (Momentary-only, Sustained-only and All Outages), Average Circuit Outage Duration, SARI, ASAI, Outages per 100 miles, etc. Annual summaries and multi-year averages.
      - Analysis of Outage Causes: Voltage class comparisons for outage causes classified into 10 categories (e.g., Lines, Terminal Equipment, System Protection, Weather, etc.). Five year summaries. Trend charts for Outage Cause percentages.
      - Customer and/or Delivery Point Analysis, using IEEE Std 1366 statistics and other metrics (if Company submits customer and/or delivery point impacts with its transmission circuit outage data, consistent with the "Data Requirements for the 2013 SGS Transmission Reliability Benchmarking Study", a separate document).
    - Company-Specific Features:** Proprietary distribution, Company is explicitly identified.
      - Circuit-level measures based on outages: TACS, TACS Components, "GAP" analysis comparing reliability performance with circuit criticality, IEEE metrics, regression residual analysis of circuit outages vs. circuit length, outage causes.
      - Circuit-level measures for Customer and/or Delivery Point interruptions (if supporting data is submitted by Company).
      - Regression of outages vs. circuit length.
  - 1.2 The **Summary** is a customized, summarized version of the Report, delivered in printed copy and PDF. Proprietary distribution Company is explicitly identified. Trend charts, bar charts and tables are produced for TACS, IEEE metrics and outage causes and identify industry averages, quartiles, a self-selected peer group and regional references. The **Extended Summaries** delivered in PDF only is in similar format containing additional measures and are two separate documents for Automatic-only and Auto+Forced/Manual outage performance.
  - 1.3 The **NERC TADS Supplement:** Proprietary distribution, Company is explicitly identified. Trend charts, bar charts and tables for 12 of 18 metrics for AC transmission lines defined by the North American Reliability Corporation (NERC) Transmission Availability Data System (TADS). Includes industry averages, quartiles and regional references and is delivered in PDF only.
  - 1.4 **Study Presentation** is a 2 day conference held exclusively for Study participants, scheduled on May 13-14, 2013 in New Orleans, LA. It consists of results presentation, participant presentations and discussion, included is an evening dinner and reception on day 1 and lunch on both days.
  - 1.5 **Data Filters:** SGS runs a series of Data Filters for quality assurance of outage data. There are approximately 30 integrity checks and other summary statistics. Data Filter results are returned to Company in a timely fashion after data submission.
2. **Purchasing and Contract Arrangements:**
  - 2.1 SGS will not commence work on behalf of Company until SGS receives this executed document, purchase contract or letter referring to a purchase order or other document authorizing the project. Any contract or PO must reference this proposal document. It is understood that once such occurs, both SGS and Company are bound by the terms of this Agreement.
  - 2.2 Since the Study is a comparative reliability analysis and relies upon pooled raw outage data to provide transmission performance benchmarking, contractual arrangements must be prepared in a manner to allow pooling of data (which benefits third parties), while maintaining confidentiality and outlined in the following section "Confidentiality, Ownership and Conditions".

**3. Confidentiality, Ownership and Conditions:**

- 3.1 Company's raw outage data and individual circuit-level information will be converted and pooled in a common database at SGS's facility. Data will be stored in a password protected Windows 7 Professional environment. Company is responsible for security in transmission of data to SGS. Company's raw outage data and circuit-level information and identifiable performance summaries derived from outage and circuit data are considered confidential information.
- 3.2 SGS will identify Company as a Study Participant in the body of the Report, Summaries and in marketing the Study and services to prospective clients. Identification of Company as a Study Participant will not be used as an endorsement of the Study by Company without prior approval of Company's representative.
- 3.3 SGS will not divulge to any party Company-identifiable confidential information without prior written direction by Company unless SGS has been requested or required to disclose such information by a court, governmental agency or administrative body. Provided, however, that if SGS receives such a request, subpoena or order, it will promptly notify Company of such request so that Company can take such action as it deems appropriate.
- 3.4 Summary information about Company's performance is reported to other Participants using anonymous identifiers (e.g., Company A, B, C, ...) on a voltage class basis. Company's performance data is aggregated on a geographic region basis (e.g., Southwest, Northeast, etc.) and Company is identified as a member of one or more geographic regions.
- 3.5 SGS will retain all raw outage and circuit-level information submitted by Company and will destroy it at Company's written direction after December 31, 2013. The data is retained for warranty service or to perform ad-hoc or structured analyses for Company or SGS clients after Study completion. SGS may identify Company as a Study Participant in such analyses. SGS will maintain the confidentiality of Company's data as required by sub-paragraphs 3.1 - 3.4.
- 3.6 SGS is actively engaged in research and development of statistical methods for analysis of transmission circuit and system reliability. Results of R&D may be presented in professional or industry journals and/or technical presentations. Company's data may be used for R&D activities. SGS will maintain the confidentiality of Company's data as required by sub-paragraphs 3.1 - 3.5.
- 3.7 Computer programs used to produce the Study are property of SGS and are not a deliverable of this project.
- 3.8 SGS Statistical Services is the author of the Study and the Copyright holder. Much of the information contained therein is the confidential, trade secret and proprietary information of SGS which was developed at great expense to SGS. Company receives only a non-exclusive license to use the Study solely for its own internal use. Company cannot provide the Study or any portion thereof except as provided in subsections 3.9 and 3.10 to third parties including, but not limited to, regulatory agencies, other transmission owners or operators which are not participants in the Study, consultants, contractors, professional or trade associations and competitors of SGS without SGS's prior written approval. The information contained in the Study may not be sold, traded or given to third parties without SGS's prior written approval.
- 3.9 Company is provided a Summary. This document contains general information regarding SGS Study methods and a limited number of anonymously-identified high-level summary performance values of other Participants. Company is explicitly identified in its own Summary. Company, at its own discretion, may release and reproduce the Summary.
- 3.10 If Company is subjected to a "request for information", "freedom of information" request or any other type of request or subpoena from any state or Federal regulatory agency or any other entity or person regarding comparative performance or benchmarking or any SGS Deliverable, Company may, without SGS's prior written permission or notification, release only the Summary document and/or "Company-Specific Features" listed under "Deliverables" without SGS's prior written approval. If Company is served with or receives a request or subpoena from any court, state or federal regulatory agency or other administrative body or the like, then the Company will promptly notify SGS in writing of such request so that SGS can take such action as it deems appropriate.
- 3.11 The NERC TADS Supplement is copyrighted by SGS and may not be circulated outside of Company to organizations or individuals such as (but not limited to), the North American Electric Reliability Corporation (NERC), NERC member committees, working groups and task forces, Regional Entities affiliated with NERC, professional organizations, industry associations, contract engineering and consulting firms, etc. Company may release only its own NERC TADS performance summaries delivered as output data files in spreadsheet format.
- 3.12 If Company wishes to share its anonymous identifiers described in subsection 3.4 with other Participants, Company must arrange to do so itself on a bilateral basis with other Participants. To insure anonymity, Company shall not share identifiers with more than one-half of the Participants within any voltage class.
- 3.13 The Study contains Non-Public Transmission Information covered by the Federal Energy Regulatory Commission (FERC) Standards of Conduct (18 C.F.R. Part 358 effective September 22, 2004). Company is thus informed NOT to send or disclose the Study in any fashion to any Company Sales or Marketing Function or Marketing Affiliate or Energy Affiliate. SGS will not reveal any non-public Transmission Information to any person employed by Company in a Sales or Marketing Function of the Company or by an Energy Affiliate.
- 3.14 To the extent the Confidential Information is also Critical Energy Infrastructure Information as defined by 18 C.F.R. Part 388, SGS certifies that it and any employee, agent or representative who may be granted access to Confidential Information that is also Critical Energy Infrastructure Information would not be restricted from access to such Critical Energy Infrastructure Information pursuant to 18 C.F.R. Part 388.

Section 3 shall survive termination of this Agreement.

#### 4. *Warranty:*

- 4.1 Errors and Omissions: SGS represents and warrants as its only warranty that upon completion of the Study and for a period ending December 31, 2013, the Study is substantially free of non-trivial errors and omissions resulting from SGS's computer programming, reporting and analysis. In the event of the discovery of any major error or omission resulting from SGS's computer programming, reporting and analysis, SGS will notify Company's representative. SGS may remedy the error or omission by re-issuing the affected portion of the Study in a timely manner. This is Company's exclusive remedy for any error or omission in the Study covered by such warranty, and as SGS's entire liability in contract, tort or otherwise, for such errors. Under no circumstance will SGS be liable for incomplete or erroneous data submission by any Participant. In no event shall SGS be liable for any damages, including but not limited to incidental or consequential damages, or lost profits.
- 4.2 The data submission, computer software and programs employed by SGS in the production of the NERC TADS Supplement differ from those employed by NERC in its TADS reports. SGS cannot warrant its results will be identical to those produced by NERC or independently by Company. Therefore, SGS does not warrant NERC TADS metrics produced in the Study.

#### 5. *Company's Additional Responsibilities*

- 5.1 Company must submit accurate and complete outage and circuit data in accordance with the "Data Requirements for the 2013 SGS Transmission Reliability Benchmarking Study" ("Data Requirements"), a separate document. Any renewing Company's data should be submitted in the same format as for the 2012 Study or in the format outlined in the Data Requirements document. SGS does not accept data submission in NERC TADS format.
- 5.2 Company shall designate a Representative to act as a project and technical liaison with SGS. If Company does not designate a Representative, SGS shall assume the individual submitting its data to SGS is Company's designee. Company is responsible to provide competent, timely and willing technical support for outage data transfers. All data through December 31, 2012 should be downloaded and sent to SGS as soon as possible after January 1, 2013.
- 5.3 Company must make every effort to provide accurate all-time system peak megawatt load. For systems consisting of multiple operating units or regions or control areas, system peak megawatt load is the all-time, non-coincident peak for each operating unit, region or control area.
- 5.4 SGS provides Company with Data Filter results for quality assurance of Company's data and SGS's data conversion. The Data Filters highlight anomalies in the outage data or circuit definitions and contain summary statistics and a copy of raw data conversion. Upon receipt of the Data Filter results, Company must provide any desired or directed corrections within 10 business days. Failure to provide corrections is assumed to be an affirmation of data integrity and accuracy. If corrections are necessary, SGS will again run the Data Filters and expect affirmation of the Data Filter results.
- 5.5 Company shall complete its initial data submission not later than February 22, 2013 and if re-submission is necessitated by Data Filter results, the completed, fully reconciled submission deadline is March 15, 2013. Submissions after these dates may be assessed an additional fee (see section 7 below).
- 5.6 SGS will provide Company with a preliminary Extended Summary on or about April 8, 2013. Company has responsibility to thoroughly review the preliminary Extended Study and advise SGS of any concerns therein no later than April 15, 2013.
6. **Termination.** Should Company fail to comply with any provision of this agreement, SGS may terminate this agreement and bill Company for services rendered. Full payment for services rendered by Company shall be promptly made upon termination.

#### 7. *Benchmarking Participation Fees:*

- 7.1 The Study is performed on a fixed-fee basis. Fees are based upon system size and type according to the following criteria: A Single System is defined as primarily a geographically contiguous, transmission system of usually a single control area that is owned and operated by a single entity.

- Single "Small" System: (Transmission Circuit-Miles) x (All-time System Peak Megawatts) < 100,000,000  
Fee: \$15,000
- Single "Large" System: (Transmission Circuit-Miles) x (All-time System Peak Megawatts) >= 100,000,000  
Fee: \$19,500
- A Multiple Region Large System is a single-owner, usually multiple control areas, which may be geographically disconnected or large systems with multiple operating companies or regions.  
Fee: \$30,000

Additional Deliverable for Multiple "Large" Systems: SGS produces analysis for combined system average and Company defined operating areas (e.g., operating companies, regions or state jurisdictions) in the deliverables. The basis for assignment of operating areas are individual circuits, which may be assigned to multiple strata (i.e., an operating area, region or a state jurisdiction) but may not be proportionally assigned (e.g., 50% to region A and 50% to region B).

#### 7.2 *Legacy or Merged System Fees*

When a Study participant merges or otherwise combines and submits a single, combined data submission, an additional fee after the first (and largest) predecessor system will be assessed equal to one-half the current applicable for each additional predecessor system. The assessment of the legacy fee will generally provide a lower fee than the original systems' combined fees. Example: System A is a "Multiple Region Large System" as described in section 7.1 with a fee of \$30,000. It acquires System B, which is a "Single Small System" and it is added as a new region to system A. The additional fee is \$7,500, which is added to the \$30,000 fee for system A. The additional fees continue to apply in future years and are subject to change. An exception is the combination of two "Small" systems or a "Large" and a "Small" system which then request "Multiple Region Large System" reporting. In this case a single "Multiple Region Large System" fee is applied to the combined system.

## 7.3 Supplemental Fees for Entry, Late Data Submission and Non-standard Data

- Entry Fee: \$3000

The Entry Fee is applied for any new entrant in the Study or systems which have not participated in the Study or past participants that have not been in the Study in the previous two years. For new entrants, this fee includes a one-day site visit for a presentation on the SGS Study and work on data transfers.

- Late Data Submission (initial submission after February 22, 2013 and/or final reconciled submission after March 15, 2013 subject to discretion by SGS): \$5000

- Non-standard Data Formats or Processing Data from Two or More Sources: \$5000

Non-standard Data Formats or Processing Data from Two or More Sources require significantly more programming work for conversion because it does not conform to standards outlined in "Data Requirements for the 2013 SGS Transmission Reliability Benchmarking Study". A non-standard format may have inconsistencies in key fields which require manual corrections or additional extensive tabling to reconcile inconsistencies in the data. Data from Two or More Sources is when a system submits two or more data files of outage data from two operating companies, for instance. We can advise you if your data is in a non-standard format if you provide a small sample.

## 7.4 Billing Procedures and Payment Terms

SGS will invoice Company for the entire project cost on project commencement (when a contract or Purchase Order is received). If Company has different payment policies or requires alternate billing arrangements, please inquire. Terms for payment are net 30 days US Funds, payable to SGS Statistical Services.

## 7.5 Business Information, Primary Contact

Gregg A. Spindler  
SGS Statistical Services  
3975 Pompey Hollow Road  
Cazenovia, NY 13035  
315-655-8187  
[gregg.spindler@sgsstat.com](mailto:gregg.spindler@sgsstat.com)  
[www.sgsstat.com](http://www.sgsstat.com)  
Taxpayer ID: 20-3151711  
Insurance Information on Request

8. **Force Majeure:** SGS shall not be responsible for delays or failures in its performance resulting from events, acts or omissions beyond its control or attributable to third parties, such as, but not limited to, suppliers, vendors, acts of war or terrorism or pandemic.
9. **Miscellaneous**
  - 9.1 This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, and assigns.
  - 9.2 The parties agree that SGS is an independent contractor for all purposes.
  - 9.3 All work by SGS associated with the Study is performed at SGS's offices in Cazenovia, NY. No work is performed at any location, office or facility of Company's.
  - 9.4 This Agreement constitutes the entire agreement between SGS and Company concerning the subject matter and no modifications of this Agreement shall be valid unless made in writing and signed by both parties.
  - 9.5 The individuals executing this Agreement expressly warrant and represent that they have duly and properly constituted authority to execute this Agreement for the party on whose behalf their signature appears.
  - 9.6 The parties shall attempt to resolve any dispute informally; consensual alternative dispute resolution processes may be used. This Agreement is made, executed and delivered in Onondaga County, New York and shall be governed by the Laws of the State of New York for any action concerning or arising out of this Agreement.

Approved and Accepted:

SGS Statistical Services	Company
By: <u>Gregg A. Spindler</u>	By: <u>Stephen B. Edwards</u>
Gregg A. Spindler	(print name): <u>Stephen B. Edwards</u>
Title: <u>Consultant</u>	Title: <u>MGR. ELECT. TRANSM. Reliability</u>
For: <u>SGS Statistical Services</u>	For: <u>Dominion VA Power</u>
Date: <u>11/5/2012</u>	Date: <u>Nov. 5, 2012</u>

**EXHIBIT B**

**1.1: Terms of Use for the  
2013 SGS Transmission Reliability Benchmarking Study**

**1 Confidentiality, Ownership and Conditions:**

- 1.1 Company's raw outage data and individual circuit-level information will be converted and pooled in a common database at SGS's facility. Data will be stored in a password protected Windows XP or 7 Professional environment. Company is responsible for security in transmission of data to SGS. Company's raw outage data and circuit-level information and identifiable performance summaries derived from outage and circuit data are considered confidential information.
- 1.2 SGS will identify Company as a Study Participant in the body of the Report, Summaries and in marketing the Study and services to prospective clients. Identification of Company as a Study Participant will not be used as an endorsement of the Study by Company without prior approval of Company's representative.
- 1.3 SGS will not divulge to any party Company-identifiable confidential information without prior written direction by Company unless SGS has been requested or required to disclose such information by a court, governmental agency or administrative body. Provided, however, that if SGS receives such a request, subpoena or order, it will promptly notify Company of such request so that Company can take such action as it deems appropriate.
- 1.4 Summary information about Company's performance is reported to other Participants using anonymous identifiers (e.g., Company A, B, C, ...) on a voltage class basis. Company's performance data is aggregated on a geographic region basis (e.g., Southwest, Northeast, etc) and Company is identified as a member of one or more geographic regions.
- 1.5 SGS will retain all raw outage and circuit-level information submitted by Company and will destroy it at Company's written direction after December 31, 2013. The data is retained for warranty service or to perform ad-hoc or structured analyses for Company or SGS clients after Study completion. SGS may identify Company as a Study Participant in such analyses. SGS will maintain the confidentiality of Company's data as required by sub-paragraphs 1.1 - 1.4.
- 1.6 SGS is actively engaged in research and development of statistical methods for analysis of transmission circuit and system reliability. Results of R&D may be presented in professional or industry journals and/or technical presentations. Company's data may be used for R&D activities. SGS will maintain the confidentiality of Company's data as required by sub-paragraphs 1.1 - 1.5.
- 1.7 Computer programs used to produce the Study are property of SGS and are not a deliverable of this project.
- 1.8 SGS Statistical Services is the author of the Study and the Copyright holder. Much of the information contained therein is the confidential trade secret and proprietary information of SGS which was developed at great expense to SGS. Company receives only a non-exclusive license to use the Study solely for its own internal use. **Company cannot provide the Study or any portion thereof except as provided in subsections 1.9 and 1.10 to third parties including, but not limited to, regulatory agencies, other transmission owners or operators which are not participants in the Study, consultants, contractors, professional or trade associations and competitors of SGS without SGS's prior written approval.** The information contained in the Study may not be sold, traded or given to third parties without SGS's prior written approval.
- 1.9 Company is provided a Summary. This document contains general information regarding SGS Study methods and a limited number of anonymously-identified high-level summary performance values of other Participants. Company is explicitly identified in its own Summary. Company, at its own discretion, may release and reproduce the Summary.
- 1.10 If Company is subjected to a "request for information", "freedom of information" request or any other type of request or subpoena from any state or Federal regulatory agency or any other entity or person regarding comparative performance or benchmarking, or any SGS Deliverable, Company may, without SGS's prior written permission or notification, release only the Summary document and/or "Company-Specific Features" listed under "Deliverables" without SGS's prior written approval. If Company is served with or receives a request or subpoena from any court, state or federal regulatory agency or other administrative body or the like, then the Company will promptly notify SGS in writing of such request so that SGS can take such action as it deems appropriate.
- 1.11 The NERC TADS Supplement is copyrighted by SGS and may not be circulated outside of Company to organizations or individuals such as (but not limited to): the North American Electric Reliability Corporation (NERC), NERC member committees, working groups and task forces, Regional Entities affiliated with NERC, professional organizations, industry associations, contract engineering and consulting firms, etc. Company may release **only** its own NERC TADS performance summaries delivered as output data files in spreadsheet format.
- 1.12 If Company wishes to share its anonymous identifiers described in subsection 1.4 with other Participants, Company must arrange to do so itself on a bilateral basis with other Participants. To insure anonymity, Company shall not share identifiers with more than one-half of the Participants within any voltage class.
- 1.13 The Study contains Non-Public Transmission Information covered by the Federal Energy Regulatory Commission (FERC) Standards of Conduct (18 C.F.R. Part 358 effective September 22, 2004). Company is thus informed NOT to send or disclose the Study in any fashion to any Company Sales or Marketing Function or Marketing Affiliate or Energy Affiliate. SGS will not reveal any non-public Transmission Information to any person employed by Company in a Sales or Marketing Function of the Company or by an Energy Affiliate.
- 1.14 To the extent the Confidential Information is also Critical Energy Infrastructure Information as defined by 18 C.F.R. Part 388, SGS certifies that it and any employee, agent or representative who may be granted access to Confidential Information that is also Critical Energy Infrastructure Information would not be restricted from access to such Critical Energy Infrastructure Information pursuant to 18 C.F.R. Part 388.